

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MARCIA G. FLEMING, individually, as
representative of a class of participants and
beneficiaries of the Rollins, Inc. 401(k)
Savings Plan and Western Industries
Retirement Savings Plan,

Plaintiffs,

v.

ROLLINS, INC., AS ADMINISTRATOR OF
THE ROLLINS, INC. 401(K) SAVINGS
PLAN; WESTERN INDUSTRIES NORTH,
AS ADMINISTRATOR OF THE WESTERN
INDUSTRIES RETIREMENT SAVINGS
PLAN; THE ADMINISTRATIVE
COMMITTEE OF THE ROLLINS, INC.
401(K) SAVINGS PLAN; THE
ADMINISTRATIVE COMMITTEE OF THE
WESTERN INDUSTRIES RETIREMENT
SAVINGS PLAN; THE INVESTMENT
COMMITTEE OF THE ROLLINS, INC.
401(K) SAVINGS PLAN; THE
INVESTMENT COMMITTEE OF THE
WESTERN INDUSTRIES RETIREMENT
SAVINGS PLAN; AND JOHN DOES 1-30,

Defendants.

CASE NO. 1:19-cv-05732-WMR

**DEFENDANTS ROLLINS, INC. AND WESTERN
INDUSTRIES-NORTH, LLC'S MOTION TO DISMISS**

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants Rollins, Inc. and Western Industries-North, LLC¹ (“Defendants”) hereby move to dismiss Plaintiff’s Complaint [Doc. 1]. As set forth more fully in the accompanying Memorandum of Law, (1) Plaintiff’s claims are barred by her failure to exhaust her administrative remedies prior to filing suit; (2) Plaintiff fails to assert allegations establishing Plaintiff has constitutional standing to pursue any claims; (3) the Complaint is a “shotgun pleading” that fails to meet the standards of Federal Rule 8(a); (4) the Complaint fails to state a plausible claim for breach of fiduciary duty; (5) the Complaint fails to allege any plausible claim for failure to monitor, breach of loyalty, or that a prohibited transaction occurred; and (6) Plaintiff’s claims are barred by ERISA’s six-year statute of repose to the extent they are based on allegations of conduct occurring prior to December 20, 2013.

WHEREFORE, for the reasons set forth in the Memorandum, Defendants respectfully request that the Court dismiss the Complaint in its entirety.

Respectfully submitted this 20th day of April, 2020.

¹ Western-Industries, North, LLC was misidentified in the Complaint as Western Industries North.

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*Attorney for Rollins, Inc. and Western
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing **DEFENDANTS ROLLINS, INC. AND WESTERN INDUSTRIES-NORTH, LLC'S MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system which will send email notification of such filing to all counsel of record.

This 20th day of April, 2020.

/s/ W. Bard Brockman
W. Bard Brockman
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*Attorney for Rollins, Inc. and Western
Industries-North, LLC*